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Plaintiff Lynn Bolden

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

LYNN BOLDEN, an individual, on behalf of  
himself and all others similarly situated,

Plaintiff,

v.

BARILLA AMERICA, INC., a corporation,

Defendant.

Case No.

**CLASS ACTION COMPLAINT  
FOR DAMAGES AND  
EQUITABLE RELIEF**

**JURY TRIAL DEMANDED**

Plaintiff Lynn Bolden (“Plaintiff”), by and through undersigned counsel, brings this  
action individually and on behalf of all other similarly situated persons against the Defendant,  
Barilla America, Inc. (“Defendant” or “Barilla”), and alleges the following:

**NATURE OF THE ALLEGATIONS**

1. Plaintiff brings this class action against Defendant Barilla, seeking redress for  
Defendant’s fraudulent and misleading practice of advertising its Pasta Sauce (“the Product”) as

1 containing “No Preservatives,” when, in fact, the Product contains citric acid, a known  
2 preservative.

3         2. Defendant advertises its Pasta Sauce as containing “No Preservatives,” despite the  
4 presence of citric acid, which is listed as an ingredient on the back of the bottles of its Pasta  
5 Sauce, including Barilla Traditional, Barilla Chunky Traditional, Barilla Marinara, Barilla Meat  
6 Sauce, Barilla Mushroom, Barilla Roasted Garlic, Barilla Spicy Marinara, Barilla Sweet Peppers,  
7 Barilla Tomato and Basil, Barilla Tuscan Herb, and other flavors of Barilla Pasta Sauce that  
8 contain citric acid and a “No Preservatives” label.  
9  
10

11         3. The “No Preservatives” claim is prominently displayed on the front of the Product  
12 packaging even though citric acid is listed in the ingredients.

13         4. The Food and Drug Administration (“FDA”) has categorized citric acid as a  
14 preservative, used to prevent food spoilage, delay rancidity and slow changes in color, flavor and  
15 texture.<sup>1</sup>  
16

17         5. Accordingly, Defendant’s statements that the Products do not contain  
18 preservatives are false and misleading.  
19

20         6. Plaintiff and the Class read and relied upon these false representations when  
21 purchasing the Product. Had Plaintiff and the Class known that the Product contained  
22 preservatives, contrary to the claims on the packaging, Plaintiff and the Class would not have  
23 purchased this Product or they would have paid less for it.  
24

25         7. By deceptively marketing and labeling the Product as containing “No  
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27 <sup>1</sup> *Overview of Food Ingredients, Additives & Colors*, (revised April 2010), found at  
28 <https://www.fda.gov/food/ingredientpackaginglabeling/foodadditivesingredients/ucm094211.htm> (last visited 1/8/2019).

1 Preservatives,” Defendant wrongfully capitalized on, and reaped profits from, consumers’ strong  
2 preference for food products made free of preservatives.

3 8. Plaintiff brings this action individually and on behalf of a Nationwide Class and a  
4 California Subclass of similarly situated consumers, seeking an injunction barring the Defendant  
5 from engaging in further deceptive advertising and labeling of the Product, restitution and  
6 disgorgement of ill-gotten profits, damages, reasonable attorneys’ fees and costs.  
7

8 **PARTIES**

9 **PLAINTIFF**

10  
11 9. Plaintiff Lynn Bolden (“Plaintiff Bolden” or “Plaintiff”) is, and at all relevant  
12 times hereto was, a citizen of California. At relevant times, including from January 2017 to  
13 October 2018, Plaintiff purchased Defendant’s Pasta Sauce Product including Barilla Marinara  
14 Sauce and Barilla Chunky Traditional Sauce on a biweekly basis. Plaintiff purchased each  
15 package of the Product from stores such as Ralphs, Walmart and Winco Foods, in the Long  
16 Beach, California area.  
17

18 10. The Pasta Sauce that Plaintiff purchased contained labels that prominently  
19 advertised the Product as containing “No Preservatives.” In purchasing the Product, Plaintiff  
20 read and relied upon that material representation. Had Plaintiff known that the Pasta Sauce did,  
21 in fact, contain preservatives, Plaintiff would not have purchased the Product or he would have  
22 paid less for it. Plaintiff has been damaged by his purchase of the Pasta Sauce, because Plaintiff  
23 did not receive what he reasonably intended to receive when purchasing the Pasta Sauce and/or  
24 because the Product is worth less than what Plaintiff paid for it.  
25  
26  
27  
28

**DEFENDANT**

11. Barilla America Inc, is an Illinois corporation with its principal place of business at 885 Sunset Ridge Road, Northbrook, IL 60062.

12. Barilla is the owner, manufacturer and distributor of the Product. It created and/or authorized the false, misleading and deceptive labeling and advertising for the Product. It is also the company that promoted, marketed and sold the Product in this judicial district.

13. Barilla markets the Product throughout the United States including in California and in this judicial district. The Product is sold at retail and online outlets, including Ralphs, Walmart, Target, Safeway and other retailers.

**JURISDICTION AND VENUE**

14. This Court has original jurisdiction over this action under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). The Plaintiff and most members of the Class are citizens of a state different from that of the Defendant, the putative class size is greater than 100 persons, and the amount in controversy in the aggregate for the putative Class exceeds the sum or value of five million dollars exclusive of interest and costs.

15. This Court has personal jurisdiction over Defendant pursuant to laws including California Code of Civil Procedure (“Cal. Code Civ. Proc.”) § 410.10. A substantial portion of the wrongdoing alleged in this Complaint took place in the State of California. Barilla is authorized to do business in the State of California. Accordingly, Barilla has sufficient minimum contacts with the State of California and/or otherwise intentionally avails itself of the markets in the State of California through the production, promotion, marketing, and sale of products and

1 services in this State to render the exercise of jurisdiction by this Court permissible under  
2 traditional notions of fair play and substantial justice.

3 16. Venue is proper in this Court and judicial district pursuant to 28 U.S.C. § 1391(b)  
4 because a substantial part of the events or omissions giving rise to the claims asserted herein  
5 occurred in this venue, including specifically the relevant transactions in which Plaintiff was sold  
6 Defendant's Product. Attached as Exhibit A hereto and incorporated by reference is Plaintiff's  
7 declaration as to venue pursuant to California Civil Code § 1780(d).  
8

9  
10 **FURTHER FACTUAL ALLEGATIONS**

11 17. Defendant Barilla is an international manufacturer of pasta and pasta sauces, and  
12 competes with major brands including Bertolli, Newman's Own and Kraft Heinz (which owns  
13 the Classico pasta sauce brand) in an attempt to dominate the U.S. pasta sauce market.  
14

15 18. The Defendant manufactures and distributes over 12 varieties of pasta sauces  
16 through major retailers such as Target, Walmart, Ralphs, and Safeway.

17 19. The Product at issue here is advertised as containing "No Preservatives."  
18 However, the ingredients include citric acid, a well-known preservative.  
19

20 **THE FDA HAS IDENTIFIED CITRIC ACID AS A PRESERVATIVE**

21 20. Citric acid is a naturally occurring acid derived from citrus fruits, such as lemons  
22 and limes, and some vegetables, notably tomatoes. However, it can be, and often is,  
23 manufactured through a fermentation process that converts *Aspergillus niger* (a black mold) into  
24 citric acid.<sup>2</sup>  
25  
26

27  
28 <sup>2</sup> Iliana E. Sweis and Bryan C. Cressey, *Potential Role of the Common Food Additive  
Manufactured Citric Acid in Eliciting Significant Inflammatory Reactions Contributing to*

21. When added to foods, naturally occurring citric acid or manufactured citric acid (“MCA”) acts as a preservative.<sup>3</sup> Specifically, it prevents botulism in canned and jarred foods by reducing the PH levels that bacteria need to survive, thereby dramatically increasing the shelf life of such products.<sup>4</sup>

22. While citric acid is generally regarded as a safe food additive, citric acid can aggravate acid reflux and cause heartburn in some individuals.<sup>5</sup>

23. The FDA recognizes citric acid as a preservative and the food industry widely uses it as such. In 2016, 2.3 million tons of citric acid was manufactured and approximately 70% of it was used as a food or beverage additive.<sup>6</sup>

#### **MARKET APPEAL IN AN INCREASINGLY HEALTH CONSCIOUS SOCIETY**

24. The Defendant touts itself as a health conscious company that values transparency and honesty in the marketplace. Its “Principles On Responsible Food Marketing” state, in part:

“We are aware of the influence that marketing activities can have on people’s beliefs and behaviors and therefore we pay particular attention to the influence that our marketing activities can have on our consumers. In particular:

\* \* \*

2. Marketing communications shall never prevent **full transparency** of the content, benefits and proper use of products.

*Serious Disease States: A Series of Four Case Reports*, Toxicol Rep. 2018; 5: 808–812, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6097542/> (last visited 1/4/2019).

<sup>3</sup> *Id.*

<sup>4</sup> *The Uses of Citric Acid in the Food Industry*, (April 21, 2015), <http://www.bellchem.com/news/the-uses-of-citric-acid-in-the-food-industry> (last visited 1/8/2019).

<sup>5</sup> Jeanette Bradley, *Can You Be Allergic or Sensitive to Citric Acid?* (revised Dec. 2, 2018), <https://www.verywellhealth.com/citric-acid-allergy-symptoms-and-how-to-cope-1323907> (last visited 1/8/2019).

<sup>6</sup> Ilana E. Sweis and Bryan C. Cressey, *Potential Role of the Common Food Additive Manufactured Citric Acid in Eliciting Significant Inflammatory Reactions Contributing to Serious Disease States: A Series of Four Case Reports*, Toxicol Rep. 2018; 5: 808–812, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6097542/> (last visited 1/4/2019).

1           3. Marketing communication shall [not]...include manipulative content and **shall**  
 2           **not include concealed, contradictory, uncertain and/or ambiguous**  
 3           **messages.**”<sup>7</sup> (emphasis original)

4           25.     However, the Defendant’s advertising and labeling practices, as they pertain to  
 5           this Product, fail to comport with the company’s stated principles. The Defendant advertises the  
 6           Product as containing “No Preservatives,” despite the fact that citric acid is listed among the  
 7           ingredients. Thus, the advertising and labeling are anything but transparent and actually include  
 8           contradictory information regarding the quality and composition of the Product, thereby inducing  
 9           Plaintiff and other consumers into believing that the Product is preservative free when it is not.  
 10           

11           26.     The Defendant’s deception is motivated by a desire to remain competitive in a  
 12           market that now demands healthier food options. As one researcher noted:

13                     The trend toward healthy eating has created challenges for marketers of sauces  
 14                     and condiments, as the perception that sauces and condiments are an unnecessary  
 15                     and unhealthy addition to many foods has made some customers cut back on  
 16                     consumption.<sup>8</sup>

17           27.     In response, manufacturers of such products are marketing sauces and condiments  
 18           as “organic and healthy, with new options such as low-sodium or low-sugar.”<sup>9</sup> Along those  
 19           same lines, manufacturers are marketing products as “certified organic” and/or including “free-  
 20           from” labels, which “help keep sauces and condiments popular with a range of influential  
 21           consumers,” such as “Boomers” and “Millennials.”<sup>10</sup>  
 22           

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23  
 24  
 25           <sup>7</sup> *Barilla’s Principles on Responsible Food Marketing*, (May 2018), <https://www.barillagroup.com/sites/default/files/Responsible%20Marketing%20Principles.pdf> (last visited 1/9/2019).

26           <sup>8</sup> *6 Trends Driving US Condiments & Sauces Market Sales to \$24 Billion and Beyond by Packaged Facts*, (July 20, 2017), <https://www.manufacturing.net/news/2017/07/6-trends-driving-us-condiments-sauces-market-sales-24-billion-and-beyond> (last visited 1/9/2019).

27           <sup>9</sup> *Id.*

28           <sup>10</sup> *Id.*

**DEFENDANT’S PRODUCT PACKAGING IS MISLEADING**

28. Defendant’s Product packaging is misleading to reasonable consumers, including Plaintiff and the Class members, and only serves the profit-maximizing interests of the Defendant. Specifically, the Defendant’s Product packaging induces reasonable consumers to believe that the Product does not contain preservatives, even though the Product contains citric acid.

29. Defendant knows, knew or should have known that Plaintiff and Class members would rely on the “No Preservatives” label when purchasing the Product, and would reasonably believe that the Product was free of preservatives.

30. In order for the reasonable consumer to know that the label on the front is misleading, he or she would need to read the list of ingredients on the back *and* know that citric acid is a preservative. Without that independent and, arguably, uncommon knowledge, consumers are forced to rely on the representations made on the Product packaging.

31. Requiring consumers to research every ingredient in a product, prior to purchasing it, is unnecessarily burdensome and unreasonable in light of manufacturers’ legal and ethical obligation to accurately advertise and truthfully label the products they introduce into the stream of commerce.

32. Here, the Defendant capitalized upon consumers’ lack of knowledge by manufacturing and mislabeling the Product as preservative-free when it contains citric acid.

**PLAINTIFF AND THE CLASS WERE HARMED BY THE MISLEADING PRODUCT PACKAGING**

33. Plaintiff and the Class members have paid an unlawful premium for the Product. More specifically, they paid for preservative-free Pasta Sauce that they expected but never



1 received.

2 34. Plaintiff and Class members would have paid significantly less for the Product  
3 had they known that the Product contained preservatives.

4 35. In the alternative, Plaintiff and Class members would not have purchased the  
5 Product at all had they known that the Product contained preservatives.

6 36. Therefore, Plaintiff and Class members purchasing the Product suffered injury-in-  
7 fact and lost money as a result of the Defendant's false, unfair, and fraudulent practices, as  
8 described herein.  
9

10 37. As a result of its misleading business practice, and the harm caused to Plaintiff  
11 and the Class members, Defendant should be enjoined from labeling its Pasta Sauce as  
12 preservative-free when it contains citric acid. Furthermore, Defendant should be required to pay  
13 for all damages caused to deceived consumers, including Plaintiff and the Class members.  
14  
15

16 **PLAINTIFF'S CLAIMS ARE NOT SUBJECT TO PREEMPTION**

17 38. Plaintiff's claims under state laws are not preempted by federal law. They are  
18 consistent with the FDCA, which provides that "[a] food shall be deemed misbranded... [i]f its  
19 labeling is false or misleading in any particular." 21 U.S.C. § 343 (a)(1). As set forth above, the  
20 definition of "preservative" used herein is in accord with that of the FDA. Further, FDA  
21 regulations specifically note that statements such as "contains no preservatives" are non-nutritive  
22 claims that are not governed by 21 C.F.R. § 101.13. See 21 C.F.R. § 101.65(b)(2). Since the  
23 FDA has not issued specific standards to determine the verity of "no preservative" claims, such  
24 claims fall outside the ambit of FDA regulations and are subject to state law. Accordingly,  
25 Plaintiff's claims are not preempted.  
26  
27  
28

**CLASS ACTION ALLEGATIONS**

39. Pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3), Plaintiff brings this action on behalf of himself and two classes, a Nationwide Class and a California Subclass.

40. The Nationwide Class is initially defined as:

**“All persons in the United States who, within the relevant statute of limitations periods, purchased the Product.”**

41. The California Subclass (“the Subclass”) is initially defined as:

**“All California residents who, within the relevant statute of limitations periods, purchased the Product.”**

42. Excluded from both the Nationwide Class and the California Subclass (referred to collectively as “the Class” or “classes”) are Defendant, the officers and directors of the Defendant at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which Defendant has or had a controlling interest; any judge and/or magistrate judge to whom this action is assigned and any members of such judges’ staffs and immediate families; and, any persons or entities that purchased the Product for sole purposes of resale.

43. Plaintiff reserves the right to amend or modify the Class definitions with greater specificity or division, or as otherwise deemed necessary, after having had an opportunity to conduct discovery.

44. The proposed classes meet all criteria for class certification under Fed. R. Civ. P. 23(b)(3), including numerosity, superiority, typicality, commonality, and adequacy of

1 representation.

2 **Numerosity of the Class**

3 **(Fed. R. Civ. P. 23(a)(1))**

4 45. The proposed Class satisfies numerosity. The Product is offered for sale at over  
5 100 supermarkets and other stores in California and across the United States. While the precise  
6 number of Class members is unknown to Plaintiff, the Class likely constitutes, at the least, tens  
7 of thousands. Individual joinder of the Class members in this action is impractical. Addressing  
8 the Class members' claims through this class action will benefit Class members, the parties, and  
9 the courts.  
10

11 **Superiority of a Class Action**

12 **(Fed. R. Civ. P. 23(b)(3))**

13 46. A class action is superior to any other means for adjudication of the Class  
14 members' claims. The damages or other financial detriment suffered by individual Class  
15 members is relatively small compared to the burden and expense that would be entailed by  
16 individual litigation of their claims against the Defendant. It would be impractical for individual  
17 Class members to bring individual lawsuits to vindicate their claims.  
18

19 47. Even if Class members could afford such individualized litigation, the court  
20 system could not. Individualized litigation would create the danger of inconsistent or  
21 contradictory judgments arising from the same set of facts. Individualized litigation would also  
22 increase the delay and expense to all parties and the court system from the issues raised by this  
23 action. By contrast, the class action device provides the benefits of adjudication of these issues  
24 in a single proceeding, economies of scale, and comprehensive supervision by a single court, and  
25 presents no unusual management difficulties under the current circumstances.  
26  
27  
28

1           48.     Furthermore, Defendant's misrepresentations were made on the label of the  
2 Product. All Class members, including Plaintiff, were exposed to and continue to be exposed to  
3 the omissions and affirmative misrepresentations. If this action is not brought as a class action,  
4 Defendant can continue to deceive consumers and violate the law with impunity.  
5

6                           **Typicality of Claims**

7                           **(Fed. R. Civ. P. 23(a)(3))**

8           49.     The proposed Class satisfies typicality. Plaintiff and the Class members all  
9 purchased the Product, were deceived by the false and deceptive labeling, and lost money as a  
10 result. Accordingly, Plaintiff's claims are typical of, and are not antagonistic to, the claims of  
11 other Class members. Moreover, Plaintiff is advancing the same claims and legal theories on  
12 behalf of himself and all Class members. There are no defenses that are unique to the Plaintiff.  
13

14                           **Predominance of Common Questions of Fact and Law**

15                           **(Fed. R. Civ. P. 23(a)(2); 23(b)(3))**

16           50.     The proposed Class satisfies commonality, and common questions of law and fact  
17 predominate. Questions of law and fact common to Plaintiff and the Class include:  
18

- 19           a.     Whether Defendant engaged in marketing and promotional activities which were  
20                 likely to deceive consumers by labeling the Product as "preservative free" when it  
21                 contained citric acid;
- 22           b.     Whether Defendant omitted, suppressed, and/or concealed material facts  
23                 concerning the Product's ingredients;
- 24           c.     What the fair market value of the Product would have been throughout the Class  
25                 Period but for Defendant's omissions, suppressions, and/or concealments  
26                 concerning the true content of the Product;  
27  
28

- 1 d. Whether the price that Defendant charged for its Pasta Sauce Product exceeded its  
2 fair market value;
- 3 e. Whether Defendant was unjustly enriched at the expense of Plaintiff and Class  
4 members;
- 5 f. Whether Plaintiff and the Class were deprived of the benefit of the bargain in  
6 purchasing Defendant's Product;
- 7 g. Whether Defendant violated California's False Advertising Law, California's  
8 Consumer Legal Remedies Act, and/or California's Unfair Competition Law; and  
9
- 10 h. Whether Plaintiff and Class members are entitled to appropriate remedies,  
11 including restitution and injunctive relief, and the nature of those remedies.  
12

13 **Adequacy of Representation**

14 **(Fed. R. Civ. P. 23(a)(4))**

15 51. Plaintiff is an adequate representative of the Class as he is a member of the Class,  
16 he seeks relief for the Class, his interests do not conflict with the interests of the Class members,  
17 and he has no interests antagonistic to those of other Class members. Plaintiff intends to  
18 vigorously prosecute this case. In furtherance of that goal, Plaintiff has retained counsel  
19 competent in the prosecution of complex consumer fraud and class action litigation.  
20

21 **Risk of Inconsistent or Dispositive Adjudications and the Appropriateness**  
22 **of Final Injunctive or Declaratory Relief**

23 **(Fed. R. Civ. P. 23(b)(1) and (2))**

24 52. In the alternative, this action is maintainable as a class action under Federal Rule  
25 of Civil Procedure 23(b)(a) and (1) and (2), because:  
26

27 (a) The prosecution of separate actions by individual members of the Class would  
28 create a risk of inconsistent or varying adjudication with respect to individual Class members,

1 which would establish incompatible standards of conduct for the Defendant; or

2 (b) The prosecution of separate actions by individual Class members would create a  
3 risk of adjudications with respect to individual members of the Class which would, as a practical  
4 matter, be dispositive of the interests of other members of the Class not parties to the  
5 adjudications, or substantially impair or impede their ability to protect their interests; or  
6

7 (c) Defendant has acted or refused to act on grounds generally applicable to the  
8 Class, thereby making appropriate final injunctive or corresponding declaratory relief with  
9 respect to the Class as a whole.  
10

11 **Issue Certification**

12 **(Fed. R. Civ. P. 23(c)(4))**

13 53. In the alternative, common questions of fact and law, including those set forth  
14 above, are appropriate for issue certification.

15 **CAUSES OF ACTION**

16 **COUNT I: VIOLATION OF CALIFORNIA’S FALSE ADVERTISING LAW (“FAL”)**  
17 **CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17500, ET SEQ**  
18 **(FOR THE CALIFORNIA SUBCLASS)**

19 54. Plaintiff incorporates all preceding and subsequent paragraphs as if fully set forth  
20 herein.

21 55. Plaintiff brings this claim individually and on behalf of the members of the  
22 proposed California Subclass.

23 56. California’s FAL makes it “unlawful for any person to make or disseminate or  
24 cause to be made or disseminated before the public . . . in any advertising device . . . or in any  
25 other manner or means whatever, including over the Internet, any statement, concerning . . .  
26 personal property or services professional or otherwise, or performance or disposition thereof,  
27  
28

1 which is untrue or misleading and which is known, or which by the exercise of reasonable care  
2 should be known, to be untrue or misleading.”

3 57. Defendant has represented and continues to represent to the public, including  
4 Plaintiff and members of the California Subclass, that the Product is preservative free despite the  
5 fact that citric acid, a known preservative, is listed among the ingredients. Because Defendant  
6 has disseminated misleading information regarding its Product, and Defendant knows, knew, or  
7 should have known through the exercise of reasonable care, that the representation was and  
8 continues to be misleading, Defendant violates the FAL.  
9

10 58. As a result of Defendant’s false advertising, Defendant has and continues to  
11 fraudulently obtain money from Plaintiff and members of the California Subclass.  
12

13 59. Plaintiff requests that this Court order the Defendant to restore this money to  
14 Plaintiff and members of the California Subclass, to order disgorgement of the profits Defendant  
15 made on these transactions, and to enjoin Defendant from further violations of the FAL.  
16

17 60. Plaintiff is entitled to relief as prayed for hereunder.

18 **COUNT II: VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT (“CLRA”)**  
19 **CALIFORNIA CIVIL CODE § 1750 ET SEQ.**  
20 **(FOR THE CALIFORNIA SUBCLASS)**

21 61. Plaintiff incorporates all preceding and subsequent paragraphs as if fully set forth  
22 herein.

23 62. Plaintiff brings this claim individually and on behalf of the members of the  
24 proposed California Subclass.  
25

26 63. Plaintiff is a consumer as defined by California Civil Code § 1761(d).

27 64. The sale of Defendant’s Pasta Sauce Product to Plaintiff and members of the  
28

1 California Subclass were “transactions” within the meaning of Cal. Civ. Code § 1761(e).

2 65. The pasta sauces purchased by Plaintiff and members of the California Subclass  
3 are “goods” within the meaning of Cal. Civ. Code § 1761(a).  
4

5 66. Defendant violated and continues to violate the CLRA by engaging in the  
6 following practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiff  
7 and the California Subclass, which were intended to result in, and did result in, the sale of the  
8 Product:  
9

10 (5) Representing that [the Product has]...characteristics...uses [and] benefits...which [it  
11 does] not have...

12 \*\*\*

13 (7) Representing that [the Product is] of a particular standard, quality, or  
14 Grade...if [it is] of another.

15 67. Defendant violated the CLRA by falsely labeling and advertising its Product as  
16 containing “No Preservatives” when, in fact, the Product contains citric acid, a known  
17 preservative.

18 68. As a result of Defendant’s false representations, Plaintiff and the California  
19 Subclass purchased a Product that did not have the characteristics, qualities, or value promised  
20 by Defendant.

21 69. Under Cal. Civ. Code § 1780(a), Plaintiff and members of the California Subclass  
22 seek injunctive and equitable relief for Defendant’s violations of the CLRA. Contemporaneously  
23 with the filing of this Complaint, Plaintiff will send a notice letter by certified mail to Defendant  
24 Barilla indicating his intent to pursue claims under the CLRA that provides Defendant with an  
25 opportunity to cure the unlawful practice, consistent with Cal. Civ. Code § 1782. If Defendant  
26 fails to take corrective action within 30 days of receipt of the demand letter, Plaintiff will amend  
27  
28



1 this Complaint to include a request for damages as permitted under Cal. Civ. Code § 1782(d).

2 **COUNT III: VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW (“UCL”)**  
3 **CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, ET SEQ**  
4 **(FOR THE CALIFORNIA SUBCLASS)**

5 70. Plaintiff incorporates all preceding and subsequent paragraphs as if fully set forth  
6 herein.

7 71. Plaintiff brings this claim individually and on behalf of the members of the  
8 proposed California Subclass.

9 72. Defendant’s acts, practices and omissions violate the UCL, Cal. Bus. & Prof.  
10 Code §§ 17200 *et seq.*

11 73. Plaintiff and California Class members are “persons” within the meaning of Cal.  
12 Bus. & Prof. Code § 17201.

13 74. The UCL prohibits any “fraudulent,” “unfair,” or “unlawful” business acts or  
14 practices and any false or misleading advertising.

15 75. A business act or practice is “fraudulent” under the UCL if it is likely to deceive  
16 members of the consuming public. A business act or practice is “unfair” under the UCL if the  
17 reasons, justifications and motives of the alleged wrongdoer are outweighed by the gravity of the  
18 harm to the alleged victims. A business act or practice is “unlawful” under the UCL if it violates  
19 any other law or regulation.

20 76. Defendant has violated the “fraudulent” prong of the UCL by misleading Plaintiff  
21 and the California Subclass and causing them to believe that Defendant’s Pasta Sauce Product  
22 contains “No Preservatives” when the Product, in fact, contains a preservative – citric acid.

23 77. Defendant has violated the “unfair” prong of the UCL by mislabeling its Pasta  
24  
25  
26  
27  
28

1 Sauce in order to induce consumers into believing that the Product does not contain preservatives  
2 when the Product contains at least one – citric acid.

3 78. The business acts and practices alleged herein are unfair because, among other  
4 things, they caused Plaintiff and the California Subclass to falsely believe that Defendant is  
5 offering a product that is superior to what they actually received. This deception was likely to  
6 have induced reasonable consumers, including Plaintiff, to buy Defendant's Pasta Sauce Product,  
7 which they otherwise would not have purchased, or would have paid substantially less for such  
8 Product.  
9

10  
11 79. The gravity of the harm to Plaintiff and the California Class members resulting  
12 from these unfair acts and practices outweighs any conceivable reasons, justifications and/or  
13 motives of Defendant for engaging in such deceptive acts and practices. There is no societal  
14 benefit from false advertising, only harm. While Plaintiff and the public at large were and  
15 continue to be harmed, Defendant has been unjustly enriched by its misleading half-truths and  
16 material omissions.  
17

18 80. There were reasonable available alternatives to further Defendant's legitimate  
19 business interests, other than the conduct described herein.  
20

21 81. Defendant has also violated the "unlawful" prong of the UCL by violating several  
22 California laws, as alleged herein, including the FAL and CLRA.

23 82. Unless restrained and enjoined, Defendant will continue to engage in the above  
24 described conduct. Accordingly, injunctive relief is appropriate.  
25  
26  
27  
28

**COUNT IV: BREACH OF EXPRESS WARRANTY**

83. Plaintiff incorporates all preceding and subsequent paragraphs as if fully set forth herein, and brings this claim on behalf of himself and all Class members.

84. In connection with the sale of its Pasta Sauce, Defendant issued an express warranty that the Product contained “No Preservatives.”

85. Defendant’s affirmation of fact and promise on the labels of the Product that it contained “No Preservatives” became part of the basis of the bargain between the Defendant and Plaintiff and all Class members, thereby creating express warranties that the Product would conform to Defendant’s affirmation of fact, representations, promise, and description.

86. Defendant breached its express warranties, because the Product is not preservative free – but instead contains citric acid. The Product at issue here does not live up to Defendant’s express warranties.

87. Plaintiff and the members of the Class were injured as a direct and proximate result of Defendant’s breach because: (a) they would not have purchased or they would have paid less for the Product if they had known the true facts; (b) they paid a premium price for the Product as a result of Defendant’s false warranties and misrepresentations; and (c) they purchased a Product that did not have the characteristics, qualities, or value promised by Defendant.

88. Accordingly, Plaintiff and the Class are entitled to relief as prayed for hereunder.

**COUNT V: BREACH OF IMPLIED WARRANTY**

89. Plaintiff incorporates all preceding and subsequent paragraphs as if fully set forth herein, and brings this claim on behalf of himself and all Class members.

1           90.     The Uniform Commercial Code § 2-314 provides that, unless excluded or  
2 modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if  
3 the seller is a merchant with respect to goods of that kind. To be “merchantable,” goods must  
4 “run, within the variations permitted by the agreement, of even kind, quality and quantity within  
5 each unit and among all units involved,” “are adequately contained, packaged, and labeled as the  
6 agreement may require,” and “conform to the promise or affirmations of fact made on the  
7 container or label if any.”  
8

9  
10           91.     Defendant Barilla, through its actions and omissions as alleged herein, in the sale,  
11 labeling, marketing, and promotion of its Pasta Sauce, impliedly warranted that the Product  
12 contained “No Preservatives.”  
13

14           92.     Defendant is a merchant with respect to the goods which were sold to Plaintiff  
15 and the Class, and there was an implied warranty that those goods were merchantable.  
16

17           93.     Defendant breached the warranty implied in the sale of the goods, in that  
18 Defendant’s Pasta Sauce Product does not possess the quality advertised (e.g., free from  
19 preservatives). Moreover, the Product does not conform to the promises or affirmations of fact  
20 made on the container or label, because the Product contains citric acid despite the “No  
21 Preservatives” label on the front of the packaging.  
22

23           94.     Plaintiff and Class members reasonably relied upon Defendant’s implied  
24 warranties in purchasing Defendant’s Product.  
25

26           95.     Plaintiff and the members of the Class were injured as a direct and proximate  
27 result of Defendant’s breach because Plaintiff and Class members: (a) would not have purchased  
28 the Product if they had known that the Product did not have the characteristics or qualities as

1 impliedly warranted by Defendant or they would have paid substantially less for the Product; (b)  
2 paid a premium price for the Product as a result of Defendant's false warranties and  
3 misrepresentations; and (c) purchased a Product that did not have the characteristics, qualities, or  
4 value promised by Defendant.  
5

6 96. Accordingly, Plaintiff and the Class are entitled to relief as prayed for hereunder.

7 **COUNT VI: NEGLIGENT MISREPRESENTATION**

8 97. Plaintiff incorporates all preceding and subsequent paragraphs as if fully set forth  
9 herein, and brings this claim on behalf of himself and all Class members.  
10

11 98. As alleged herein, Defendant misrepresented that its Pasta Sauce contained "No  
12 Preservatives" when the Product, in fact, contained citric acid.

13 99. At the time Defendant made these representations, Defendant knew or should  
14 have known that these representations concerning its Product were false or made them without  
15 knowledge of their truth or veracity.  
16

17 100. At minimum, Defendant negligently misrepresented and/or negligently omitted  
18 material facts about its Product.  
19

20 101. The negligent misrepresentations and omissions made by Defendant, upon which  
21 Plaintiff and Class members reasonably and justifiably relied, were intended to induce, and  
22 actually induced, Plaintiff and all Class members to purchase the Product.  
23

24 102. Plaintiff and the Class would not have purchased Defendant's Pasta Sauce, or  
25 would not have purchased the Product for the same price, if they knew that the Product contained  
26 preservatives.

27 103. The negligent actions of Defendant caused damage to Plaintiff and all Class  
28

1 members.

2 104. Accordingly, Plaintiff and Class members are entitled to relief as prayed for  
3 hereunder.  
4

5 **COUNT VII: UNJUST ENRICHMENT**

6 105. Plaintiff incorporates all preceding and subsequent paragraphs as if fully set forth  
7 herein, and brings this claim on behalf of himself and all Class members.

8 106. As a result of Defendant's wrongful and deceptive conduct, Plaintiff and Class  
9 members have suffered a detriment while Defendant has received a benefit.  
10

11 107. Defendant's misleading, inaccurate and deceptive marketing and labeling  
12 intentionally cultivates the perception that consumers are being offered a product that they are  
13 not. Plaintiff and all Class members likely would not have purchased Defendant's Pasta Sauce  
14 Product, or would have paid significantly less for the Product, if Defendant had not  
15 misrepresented the nature of the Product.  
16

17 108. Defendant received a premium price benefit and/or additional sales from Plaintiff  
18 and Class members as a result of this unlawful conduct.  
19

20 109. Defendant should not be allowed to retain the profits and/or additional sales  
21 generated from the sale of products that were unlawfully marketed, advertised and promoted.  
22 Allowing Defendant to retain these unjust profits would offend traditional notions of justice and  
23 fair play and induce companies to misrepresent key characteristics of their products in order to  
24 increase sales.  
25

26 110. Thus, Defendant is in possession of funds that were wrongfully retained from  
27 Plaintiff and Class members that should be disgorged as illegally gotten gains.  
28

**PRAYER FOR RELIEF**

Wherefore, Plaintiff, on behalf of himself and all others similarly situated prays for relief as follows:

- a) An order certifying that the action may be maintained as a class action and certifying Plaintiff as representative of the Classes;
- b) An order designating undersigned counsel as counsel for the Classes;
- c) An order requiring Defendant to bear the cost of Class notice;
- d) An award of equitable relief enjoining Defendant from making any claims on the Product found to violate applicable law;
- e) An order requiring Defendant to conduct corrective advertising;
- f) An order requiring Defendant to disgorge any benefits received and any unjust enrichment realized as a result of the improper and misleading labeling, advertising, and marketing of the Product;
- g) An order requiring Defendant to pay restitution and damages to Plaintiff and Class members;
- h) An award of statutory damages;
- i) An award of punitive damages to be determined at trial;
- j) Pre- and post-judgment interest on any amounts awarded;
- k) Reasonable attorneys' fees and costs; and
- l) Any other relief the Court may deem just, appropriate, or proper.

**DEMAND FOR JURY TRIAL**

Plaintiff Lynn Bolden hereby demands trial by jury of all claims so triable.

Respectfully submitted,

Date: January 22, 2019

By: /s/ Gordon M. Fauth, Jr.

Gordon M. Fauth, Jr.

Of Counsel

K. Hope Echiverri Ranoa

Of Counsel

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Attorneys for Individual and Representative  
Plaintiff Lynn Bolden



# **Exhibit A**

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Attorneys for Individual and Representative  
Plaintiff Lynn Bolden

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

LYNN BOLDEN, *on behalf of himself*  
*and others similarly situated,*

Plaintiff,

v.

BARILLA AMERICA, INC.

Defendant.

Case No.

**DECLARATION OF LYNN BOLDEN  
PURSUANT TO CALIFORNIA CIVIL  
CODE § 1780(d)**

I, Lynn Bolden, declare as follows:

1. I am the named Plaintiff in this action. I have personal knowledge of the matters set forth herein and, if called as a witness, I could and would competently testify thereto.

2. I am informed and believe that venue is proper in this court pursuant to California Civil Code § 1780(d) based on the foregoing:

1 a. Defendant Barilla America, Inc. does business within this County and  
2 within the Central District of California, Western Division;

3 b. The transactions complained herein occurred in Los Angeles County,  
4 California, and within the Central District of California, Western Division.  
5

6 I declare under penalty of perjury under the laws of the State of California and the United  
7 States that the foregoing is true and correct.

8 Executed on January 22, 2019 in Long Beach, California.  
9

10  
11 *Lynn A Bolden*  
12 Lynn A Bolden (Jan 22, 2019)

13 Lynn Bolden  
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